

Todd M. Friedman (SBN 216752)  
Adrian R. Bacon (SBN 280332)  
Meghan E. George (SBN 274525)  
Tom E. Wheeler (SBN 308789)  
LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
21550 Oxnard St., Suite 780  
Woodland Hills, CA 91367  
Phone: 323-306-4234  
Fax: 866-633-0228  
tfriedman@ toddflaw.com  
abacon@ toddflaw.com  
mgeorge@ toddflaw.com  
twheeler@ toddflaw.com  
*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

SIDNEY NAIMAN and MICHELE	)	Case No.
DERNAY, individually and on behalf	)	
of all others similarly situated,	)	<b><u>CLASS ACTION</u></b>
	)	
Plaintiff,	)	<b>COMPLAINT FOR VIOLATIONS</b>
	)	<b>OF:</b>
vs.	)	
	)	1. NEGLIGENT VIOLATIONS
CALIFORNIA RENEWABLE	)	OF THE TELEPHONE
ENERGY PROGRAM, LLC. ; and	)	CONSUMER PROTECTION
DOES 1 through 10, inclusive, and each	)	ACT [47 U.S.C. §227(b)]
of them,	)	2. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
Defendant.	)	ACT [47 U.S.C. §227(b)]
	)	
	)	<b>DEMAND FOR JURY TRIAL</b>

Plaintiffs SIDNEY NAIMAN and MICHELE DERNAY (“Plaintiffs”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

///

## **NATURE OF THE CASE**

1  
2  
3 1. Plaintiffs bring this action individually and on behalf of all others  
4 similarly situated seeking damages and any other available legal or equitable  
5 remedies resulting from the illegal actions of CALIFORNIA RENEWABLE  
6 ENERGY PROGRAM, LLC (“Defendant”), in negligently, knowingly, and/or  
7 willfully contacting Plaintiffs on Plaintiffs’ cellular telephone in violation of the  
8 Telephone Consumer Protection Act, *47 U.S.C. § 227 et seq.* (“TCPA”) and related  
9 regulations, thereby invading Plaintiffs’ privacy and causing them to incur  
10 unnecessary and unwanted expenses.

## **JURISDICTION & VENUE**

11  
12 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiffs,  
13 residents of California, seek relief on behalf of a Class, which will result in at least  
14 one class member belonging to a different state than that of Defendants, both  
15 California companies. Plaintiff also seeks up to \$1,500.00 in damages for each call  
16 in violation of the TCPA, which, when aggregated among a proposed class in the  
17 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
18 Therefore, both diversity jurisdiction and the damages threshold under the Class  
19 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

20 3. Venue is proper in the United States District Court for the Northern  
21 District of California pursuant to *28 U.S.C. § 1391(b)(2)* because Defendants do  
22 business within the State of California and Plaintiffs reside within the Counties  
23 of Contra Costa and Solano.

## **PARTIES**

24  
25 4. Plaintiff, SIDNEY NAIMAN (“Plaintiff NAIMAN”), is a natural  
26 person residing in San Ramon, California and is a “person” as defined by *47 U.S.C.*  
27 *§ 153 (39)*.

28 5. Plaintiff, MICHELE DERNAY (“Plaintiff DERNAY”), is a natural

1 person residing in Fairfield, California and is a “person” as defined by 47 U.S.C. §  
2 153 (39).

3 6. Defendant, CALIFORNIA RENEWABLE ENERGY PROGRAM,  
4 LLC (“Defendant CREP”), is a home improvement company specializing in energy  
5 efficiency though home improvement upgrades and is a “person” as defined by 47  
6 U.S.C. § 153 (39).

7 7. The above named Defendant, and its subsidiaries and agents, are  
8 collectively referred to as “Defendants.” The true names and capacities of the  
9 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
10 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
11 names. Each of the Defendants designated herein as a DOE is legally responsible  
12 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend  
13 the Complaint to reflect the true names and capacities of the DOE Defendants when  
14 such identities become known.

15 8. Plaintiffs are informed and believe that at all relevant times, each and  
16 every Defendant was acting as an agent and/or employee of each of the other  
17 Defendants and was acting within the course and scope of said agency and/or  
18 employment with the full knowledge and consent of each of the other Defendants.  
19 Plaintiffs are informed and believe that each of the acts and/or omissions  
20 complained of herein was made known to, and ratified by, each of the other  
21 Defendants.

### 22 **FACTUAL ALLEGATIONS**

23 9. Beginning in or around July 10, 2019, Defendants contacted Plaintiff  
24 DERNAY on Plaintiff’s cellular telephone number ending in -0589, in an attempt  
25 to solicit Plaintiffs to purchase Defendants’ services.

26 10. Beginning in or around April 15, 2020, Defendants contacted Plaintiff  
27 NAIMAN on Plaintiff’s cellular telephone number ending in -4991, in an attempt  
28 to solicit Plaintiffs to purchase Defendants’ services.

1           11. Defendants used an “automatic telephone dialing system” as defined  
2 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiffs seeking to solicit its services.

3           12. Defendants contacted or attempted to contact Plaintiff DERNAY  
4 from telephone numbers confirmed to belong to Defendants, including without  
5 limitation (916)-241-3164.

6           13. Defendants contacted or attempted to contact Plaintiff NAIMAN  
7 from telephone numbers confirmed to belong to Defendants, including without  
8 limitation (530)-341-8623.

9           14. Defendants’ calls constituted calls that were not for emergency  
10 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

11           15. Defendants’ calls were placed to telephone number assigned to a  
12 cellular telephone service for which Plaintiffs incurs a charge for incoming calls  
13 pursuant to 47 U.S.C. § 227(b)(1).

14           16. During all relevant times, Defendants did not possess Plaintiffs’ “prior  
15 express consent” to receive calls using an automatic telephone dialing system or an  
16 artificial or prerecorded voice on Plaintiffs’ cellular telephone pursuant to 47  
17 U.S.C. § 227(b)(1)(A).

18           17. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
19 64.1200(c)(2) as they were attempts to promote or sell Defendants’ services.

20           18. Plaintiffs received numerous solicitation calls from Defendants within  
21 a 12-month period.

22           19. Upon information and belief, and based on Plaintiffs’ experiences of  
23 being called by Defendants despite having no prior relation to Plaintiffs  
24 whatsoever, and at all relevant times, Defendants failed to establish and implement  
25 reasonable practices and procedures to effectively prevent telephone solicitations  
26 in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

27 ///

**CLASS ALLEGATIONS**

20. Plaintiffs bring this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereinafter, “The Class”), defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

21. Plaintiffs represent, and are members of, The Class, consisting of all persons within the United States who received any solicitation/telemarketing telephone calls from Defendants to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendants within the four years prior to the filing of this Complaint.

22. Defendants, its employees and agents are excluded from The Class. Plaintiffs do not know the number of members in The Class, but believe the Class’s members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

23. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs are informed and believe and thereon allege that The Class includes thousands of members. Plaintiffs allege that The Class members may be ascertained by the records maintained by Defendants.

24. Plaintiffs and members of The Class were harmed by the acts of Defendants in at least the following ways: Defendants illegally contacted Plaintiffs

1 and The Class members via their cellular telephones thereby causing Plaintiffs and  
2 The Class members to incur certain charges or reduced telephone time for which  
3 Plaintiff and The Class members had previously paid by having to retrieve or  
4 administer messages left by Defendants during those illegal calls, and invading the  
5 privacy of said Plaintiffs and The Class members.

6 25. Common questions of fact and law exist as to all members of The  
7 Class which predominate over any questions affecting only individual members of  
8 The Class. These common legal and factual questions, which do not vary between  
9 Class members, and which may be determined without reference to the individual  
10 circumstances of any Class members, include, but are not limited to, the following:

- 11 a. Whether, within the four years prior to the filing of this  
12 Complaint, Defendants made any telemarketing/solicitation  
13 call (other than a call made for emergency purposes or made  
14 with the prior express consent of the called party) to a Class  
15 member using any automatic telephone dialing system or any  
16 artificial or prerecorded voice to any telephone number  
17 assigned to a cellular telephone service;
- 18 b. Whether Plaintiffs and The Class members were damaged  
19 thereby, and the extent of damages for such violation; and
- 20 c. Whether Defendants should be enjoined from engaging in such  
21 conduct in the future.

22 26. As a person that received numerous telemarketing/solicitation calls  
23 from Defendants using an automatic telephone dialing system or an artificial or  
24 prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs are asserting  
25 claims that are typical of The Class.

26 27. Plaintiffs will fairly and adequately protect the interests of the  
27 members of The Class. Plaintiffs have retained attorneys experienced in the  
28 prosecution of class actions.

28. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class's member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

29. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

30. Defendants have acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

### **FIRST CAUSE OF ACTION**

#### **Negligent Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b).**

#### **On Behalf of The Class**

31. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-30.

32. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular



1 47 U.S.C. § 227 (b)(1)(A).

2 33. As a result of Defendants' negligent violations of 47 U.S.C. § 227(b),  
3 Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory  
4 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

5 34. Plaintiffs and The Class members are also entitled to and seek  
6 injunctive relief prohibiting such conduct in the future.

7 **SECOND CAUSE OF ACTION**

8 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
9 **Act**

10 **47 U.S.C. §227(b)**

11 **On Behalf of The Class**

12 35. Plaintiffs repeat and incorporate by reference into this cause of action  
13 the allegations set forth above at Paragraphs 1-30.

14 36. The foregoing acts and omissions of Defendants constitute numerous  
15 and multiple knowing and/or willful violations of the TCPA, including but not  
16 limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b),  
17 and in particular 47 U.S.C. § 227 (b)(1)(A).

18 37. As a result of Defendants' knowing and/or willful violations of 47  
19 U.S.C. § 227(b), Plaintiffs and The Class members are entitled an award of  
20 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.  
21 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

22 38. Plaintiffs and the Class members are also entitled to and seek  
23 injunctive relief prohibiting such conduct in the future.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs request judgment against Defendants for the following:

26  
27 **FIRST CAUSE OF ACTION**

28 **Negligent Violations of the Telephone Consumer Protection Act**



**47 U.S.C. §227(b)**

- As a result of Defendants' negligent violations of 47 U.S.C. §227(b)(1), Plaintiffs and The Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

**SECOND CAUSE OF ACTION**

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

**47 U.S.C. §227(b)**

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiffs and The Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

**JURY DEMAND**

39. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demands, a trial by jury.

Respectfully Submitted this 3rd Day of June, 2021.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
Todd M. Friedman  
Law Offices of Todd M. Friedman  
Attorney for Plaintiff